IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.110 OF 2007
IN
NOTICE OF MOTION NO.2662 OF 2006
IN
SUIT NO.2116 OF 2006

Abdul Kadar Haji Noor Mohammed & Ors. ..Appellants.
Vs.
Mohammed Ismail Haji Noor Mohammed & Ors. ..Respondents.

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Shri Mahindra Ghelani i/b Law Charter for the Appellants.

Shri A.M. Kulkarni for Respondent No.1.

Smt. Armin Wandrewala i/b M/s. Pravin Mehta & Co. for Respondent No.2.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

21st February, 2007.

P.C. :

Heard.

The present appeal arises from the order dated 25th January, 2007 passed in Notice of Motion 2662 of 2006. The Learned Single Judge has clearly observed in the impugned order that though a prima facie case was made out by the Respondent –

Plaintiff, the Appellants having stated that the Appellants are not averse to secure the Plaintiff in respect of his claim, the Learned Single Judge has directed to deposit a sum of Rs. 16 lacs within a period of two weeks. Apart from observing that the amount if so deposited shall remain invested in any nationalized bank and shall be subject to the order that the Learned Single Judge may pass while disposing of the Notice of Motion, no interference is called for in the impugned order in this Appeal. The contention on behalf of the Appellants that the Appellants can be permitted to furnish a bank guarantee in place of the deposit of the amount cannot be accepted. Once the Appellants made a statement that the Appellants are not averse to secure the Plaintiff in relation to his claim, the modalities about securing the claim of the Plaintiff are always in the discretion of the Court. The Learned Single Judge having exercised his discretion in that regard and certainly judiciously, no interference is called for. Needless to say, all the observations in the impugned order are merely for considering the application for ad interim relief and shall not influence the Learned Single Judge while deciding the Notice of Motion on merits. With these observations, the Appeal is rejected.

Time to deposit the amount is extended till 2nd March, 2007.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)